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Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa.

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Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa: comments by the State*

I. Preamble

The South African Government expresses its appreciation for the recent visit of the Special Rapporteur1 in the country, and notes with respect her findings and comments, as enunciated in her report2. South Africa's addendum to the Special Rapporteur's is report seeks to respond to misapprehensions and imprecisions made in certain areas with the aim of building a factual basis on which to dialogue.

At the end of her mission, during the departure briefing with the Minister in the Presidency Responsible for Women, the Special Rapporteur shared with Government her preliminary findings and indicated that she will avail the draft report in March 2016, in order to allow Government ample time to respond to the findings, conclusions and recommendations. However, the draft Report was received on the 25th of May 2016 with a requirement to respond by the 9th of June 2016. The Addendum was submitted on the 9th.of June

An amended report from the Special Rapporteur was received on the 13th of June and an amended Addendum was submitted on the 14th.

This timeframe is a deviation from the Special Procedures governing the Human Rights Council. However, our commitment to the aspirations and the work of this Council motivated us to produce a quick response, notwithstanding the time constraints. Given more time, we would have done to our satisfaction. Article 74 of Code of Conduct provides that six weeks should be allowed for Government comments to be taken into account, but in any case no less than four weeks unless specifically agreed with the Government concerned.

In terms of paragraph 74 of the Code of Conduct South Africa Government requests that its report in response to the Special Rapporteur's Report be annexed as an Addendum to her final report, failing which be issued as an official document. Further, the South Africa Government will present a Statement at the 32nd Session of the Human Rights Council if its Report is annexed as an Addendum

Article 6(a) of the Code of Conduct provides that the mandate-holder shall: Always seek to establish the facts, based on objective, reliable information emanating from credible sources, that they have duly cross-checked to the best extent possible. While article 8(a) provides that in their information gathering activities the mandate-holders shall: Be guided by the principles of discretion, transparency, impartiality and even-handedness.

The Government of South Africa notes with appreciation the conclusions and recommendations of the Special Rapporteur.

Though it is acknowledged that violence against women is a challenge, South Africa has since the inception of democracy in response to this problem, identified factors such as bail, sentencing, victim empowerment, capacity building, extending access to courts to previously disadvantaged areas and integrated responses, as crucial pillars of the fight to

* Reproduced as received

1 Special Rapporteur on violence against women, its causes and consequences

2 Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa from 4 to 11 December 2015, dated 13 June 2016

end violence against women, which accordingly needed to be strengthened. National Crime Prevention Strategy (NCPS) of 1996 already marked violence against women as a priority crime to be eradicated. South Africa has an independent judiciary and a very competent National Prosecution Authority. The Justice System prosecutes, convicts and sentence perpetrators up to life sentence when found guilty. Therefore it cannot be alleged that violence against women in South Africa has normalised, or that it is a way of life.

II. Response the Special Rapporteur Report

I. Introduction

Para 1

Noted

Para 2

In the Eastern Cape she met with the Premier of the Eastern Cape, Members of the Executive Committee (MECs) as well as government officials.

Para 3

Noted

Para 4

Noted

Para 5

Noted

Para 6

Noted

II. General context

Para 7

The history of violence and the patriarchal norms and attitude towards women cannot be said to "make violence against women and children, especially in rural areas and in informal settlements, a way of life and an accepted social phenomenon. The Special Rapporteur is requested to substantiate this statement.

Violence against women is recognized globally as being widely prevalent across high, middle and low-income countries. Further, a WHO report estimates that one in three women across the globe has experienced physical and/or sexual assault at some point in their lifetime signifying the endemic scale of such violence (WHO 2013). There is a perception that violence against women affects the poor and rural women, however, there is no comparable research for wealthy couples because of the perception, therefore it reinforces the public ignorance of the problem and the culture of silence surrounding the upscale in abuse. Dr Susan Weitzman3 argues that the disclosure of abuse in these wealthy

[3] Dr Susan Weitzman: 'Domestic Violence Amongst the Wealthy Hides Behind the Veil of Silence', www.thedailybeast.com

couples only brings on a new warfare that would strip the woman of all her financial resources.

Violence against women cannot be said to be 'the way of life' when South Africa has effected law reform and established institutional mechanisms to address it. The Special Rapporteur should correct the language used.

It is a fact that violence against women is still a global phenomenon and a societal ill for which no absolute solution has been found. The stereotypical portrayal of women in the media is an international problem not just South Africa.

Para 8

Noted

Para 9

The Special Rapporteur states that in order for an individual woman victim of violence to enjoy in practice the realisation of the principle of equality between men and women and the respect of her human rights and fundamental freedoms, the political will expressed in the Constitution as well as in accepted international and regional instruments on women's human rights must be supported by a set of comprehensive legislative measures, including the renewed assessment of the elaboration for a Gender Equality Act and/or other laws that efficiently translate those rights into reality, including the possibility to amend the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)

Violence Against Women cannot be said to have normalised when government has developed laws and set up institutional mechanisms to fight this scourge. Some of its institutional mechanisms are said to be world best model practice by the Secretary General of the United Nations, Mr Ban Ki Moon.

South Africa has produced an unprecedented body of laws in this regard. During the first 20 years of democracy, more than 1200 laws and amendments aimed at dismantling apartheid and eradicating all forms of discrimination and gender based violence were promulgated. Whilst considerable progress has been made in implementing these pieces of transformative legislation, more still needs to be done. Of particular importance in this regard is the **Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)**

PEPUDA makes affirmative action mandatory. It gives effect to section 9 of the Constitution by providing for the—

- Equal enjoyment of all rights and freedoms by every person;
- Promotion of equality (including gender equality);
- Values of non-racialism and non-sexism contained in section 1 of the Constitution;
- Prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the Constitution;
- Prohibiting gender discrimination including violence against women; and
- Prohibition of advocacy of hatred, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in section 16(2)(c) of the Constitution.

It provides a framework for eliminating unfair discrimination and the promotion of equality beyond employment matters. The promotion of gender equality is one of the areas that are given priority under the Act. The Act also provides for enforcement mechanisms which include Equality Courts and Alternative Forums. On employment matters, the Act applies

to all employment issues that are excluded from the Employment Equity Act. This includes contract work and the Judiciary.

Section 28(1) thereof provides that: "if it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purpose of sentencing".

PEPUDA also provides for measures to educate the public and raise public awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment and to provide remedies for victims of unfair discrimination.

The Schedule to PEPUDA provides useful insights on existing systemic inequalities in various sectors to be given priority in the promotion of equality, including gender equality.

However, PEPUDA had shortcoming which are currently being addressed. It has been promulgated incrementally. Sections 1, 2, 3, 4(2), 5, 6, 29 (with the exception of subsection (2)), 32, 33 and 34(1) came into effect on 1 September 2000. Sections 4(1), 7 to 23, 30, 31 and 34(2) which provide for the establishment of the Equality Courts came into operation on 16 June 2003. However, sections 24 to 28 and 29(2) that deal with the promotion of equality have not yet been put into operation. Chapter 5 is supposed to regulate the promotion of equality, including gender equality is still to be promulgated yet, and therefore currently PEPUDA regulates the prohibition of unfair discrimination only

The Department of Justice and Constitutional Development is in the process of promulgating chapter 5 of PEPUDA in consultation with the Department of Women, and it will also be amending certain sections in order to strengthen it. PEPUDA has Equality Courts as enforcement mechanisms that operate from the Magistrates Court to the High Court and can be appealed at the Supreme Court of Appeal and the Constitutional Court.

During the Parliamentary Public consultation on the development of the Women Empowerment and Gender Equality Bill, all civil society organisations were opposed to its promulgation, stating that it is a duplication of PEPUDA. Further that it will lack the institutional capacity for monitoring and enforcement. They were recommending that PEPUDA be amended to incorporate whatever the Women Empowerment and Gender Equality Bill aspired to achieve. This is public knowledge and can be accessed from the Parliament's website.

III. Manifestations of violence against women, its causes and consequences

There is a component at national level that is responsible for consolidation of statistic of all reported cases against women. Furthermore, the information can be accessed from all Police Stations, e.g. when the crime is reported at a police Station it can be monitored at a National level.

It is observed that **paragraphs 10 and 11** reflect a contradiction in the way in which the Special Rapporteur uses her discretion to discredit the government's administrative data produced by the South African Police Service (SAPS) which covers the entire country on the basis of "massive under-reporting…" there is no evidence of the extent of under-reporting.

The Special Rapporteur uses the results from small scale research conducted in only one region in two provinces to claim the high prevalence of violence against women. The methodologies of some of these studies that the Special Rapporteur bases her findings have not been tested or validated by Government but yet she relies on them to shed light on the

prevalence statistics. They are also not sufficient to extrapolate into a national finding. In addition, the Special Rapporteur refers to a study conducted by the Medical Research Council in 2009 but fails to take into account the subsequent study the MRC undertook in 2014, which shows that there was a decline in femicide by intimate partners.

This paragraph states that the findings of a prevalence study in the Gauteng Province conducted by Gender Links and the Medical Research Council found out that more than three quarters of men have perpetrated violence against women … While Government acknowledges that there is a problem of violence against women, it is important that the findings of the research relied upon are verified. What was the sample size of the study? It was three quarters of what? There is a problem with reliance on small scale research and extrapolate the findings to national prevalence. Provinces differ extensively, Gauteng is different from all other provinces and Cape Town is different from all other provinces. They differ geographically, culturally, contextually, socially and economically.

Noted

A. Femicide or gender-related killings of women

The report states that: "Studies have shown that in some countries between 40 and 70 per cent of female murder victims are killed by an intimate partner.4" South Africa being among these countries, it makes it one of the countries with the highest rate of femicides.

The UNODC has a "DISCLAIMERS" of the Report referenced hereto which makes the findings thereof not conclusive. The Disclaimer states that:

> "This study has not been formally edited.
>
> The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of UNODC or the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries."

The report further states that:5

- "As the 2011 Global Study on Homicide shows, gender-based violence affects a large number of women worldwide and represents a serious threat to the harmonious development of societies"[6].
- "…However, homicide data remain far from perfect—indeed, the study draws attention to the large geographic and thematic data gaps in many regions of the world—and comparisons should always be made with caution. This is also true because legal systems and practices, as well as capacities in reporting intentional homicide, can vary significantly between countries and regions."[7]
- "The degree to which different societies apportion the level of culpability to acts resulting in death is also subject to variation. Consequently, the comparison between countries and regions of "intentional homicide", or unlawful death purposefully inflicted on a person by another person, is also a comparison of the extent to which different countries deem that a killing be classified as such, as well as the capacity of

[4] https://www.unodc.org/unodc/en/data-and-analysis/statistics/crime/global-study-on-homicide-2011.html accessed 13062016 at 20h22

[5] Note 4 above

[6] Note 4 above, page 5

[7] *Ibid*

their legal systems to record it. Caution should therefore be applied when evaluating and comparing homicide data."[8]

Small scale research studies often fail stand up to academic scrutiny; hence they are not always regarded as giving much value to knowledge.

The recommendation by the Special Rapporteur to establish ''femicides' or 'gender-relating killings' watch'' is noted with appreciation and will be considered.

B. Domestic violence

Section 17 of the Domestic Violence Act, 1998 (Act No 116 of 1998) does create specific crimes relating to domestic violence, but the fact that this provision does not create a specific crime termed 'domestic violence' has been widely considered as a flaw in the Act since it compels the use of common law/ statutory offences where the conduct of the accused falls outside the ambit of section 17 offences. It has been noted that this situation can lead to the inaccurate classification of these cases, especially in instances where the domestic relationship of the parties is not disclosed. It is therefore indubitable that not all domestic violence cases may be captured in the national statistics of domestic violence. This matter is of national concern as it potentially brings a degree of imperfection in the country's statistics. In addressing this anomaly, DoJ&CD is in the process of amending the Charge Sheet to be accompanied by an annexure detailing certain particulars of the victim, which will include the relationship with the accused. This process may consequently influence the amendment of the 'face' of the police docket to ensure the accurate classification and capturing of all domestic violence cases.

It may also be noted that DoJ&CD keeps national statistics of domestic violence matters through the Integrated Case Management System (ICMS). This statistics provides monthly data on all forms of abuse recorded at our courts in terms of the Domestic Violence Act. The ICMS is periodically upgraded to improve data quality.

Paragraphs 15 and 16 are based on only one Policy Brief by the Institute for Security Studies to provide insight on domestic violence which was released in 2014. The Special Rapporteur did not make effort to get the latest information; in paragraph 16, the Special Rapporteur made reference to the most recent study in Gauteng but such study was conducted in 2010 and her visit was in 2015. Does this mean that the country has not had any progress since 2010? Reliance on such dated information or research study on the part of the Special Rapporteur shows lack of appreciation of progress that might have been made in the country between 2010 and 2015 and could also demonstrate pre-determined perceptions regarding the domestic violence situation in the country.

C. Sexual violence, including rape

The MRC estimates cannot be inferred into a national estimate because the research was a small scale research. Further the Gauteng study is six years out of date. That means that the current crime situation could be very different to that described by the Gauteng study.

The referral to the MRC estimates is selective and ignored the preceding paragraphs of that statement. The same report that refers to the MRC estimates states that:[9]

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[8] Note 4 above, page 10

[9] https://africacheck.org/factsheets/factsheet-south-africas-official-crime-statistics-for-201314/#sthash.97Yp0vPD.dpuf

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 came into effect in December 2007 and created a number of "new" sexual offences and expanded the definition of rape. This makes it difficult to compare the rape statistics before December 2007 with more recent figures.

"Total sexual crimes" as reported by the police include 59 separate offences ranging from sex work to rape. Increases or decreases in such a broad category of crime cannot tell us much. The police should provide statistics for each of the crimes.

Overall sexual offences have decreased by 11.2% since 2008/9 when 70,514 cases were recorded. In 2013/14, 62,649 cases were recorded.

Reported cases of rape stabilised, with a slight decrease of 3%, since 2008/9 from 47,588 to 46,253 in 2013/14.

Rape Crisis Cape Town Trust report represent a very small scale study and therefore cannot be generalised to national status.

Further, this was in 2011, five years ago, what is the latest status?

The 2003 Gauteng Province study is 13 years out dated and therefore fails to take into consideration new developments, as indicated above that the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 came into effect in December 2007 and created a number of "new" sexual offences and expanded the definition of rape. This makes it difficult to compare the rape statistics before December 2007 with more recent figures

Several multi-faceted interventions have been designed and put in place in addressing sexual violence against of learners:

The ***Bill of Responsibilities (BOR): "building a culture of humanity and accountability in schools".*** This programme which is captured as Rights & Responsibilities in the Life Orientation Curriculum includes gender rights. The programme is supported by a Bill of Responsibilities that is premised on the Bill of Rights that each right comes with corresponding responsibilities. The programme is further supported by a teacher training manual that provides the content and activities for teachers to teach about rights and responsibilities. The programme has been supported by other departments and many of our partners, including Faith Based Organisations. Thus far all provinces have received training in the BOR.

Life Skills, Sexual Reproductive Health and Peer Education Programmes. The most potent barrier to GBV is to inculcate in learners a positive sense of self that is supported by strong peers and good role models. The above programmes look specifically to utilising the agency of the youth to address their social challenges in a responsible and informed manner. To this end the department has developed guidelines on peer education and scripted lesson plans on life skills and sexual reproductive health which provides learners with the knowledge, skills and attitudes to address challenges including gender based violence.

Workbook Programmes

The Department of Basic Education (DBE) has also provided scripted lessons and messaging on gender-based violence and sexual reproductive health in the Life Orientation workbooks for 2015 going forward. Developmentally appropriate messaging and information will be included in the Life Orientation Workbooks for the next 3 years.

Training educators on addressing GBV

As part of the DFID funded Safer South Africa programme, DBE has trained approximately 450 master trainers nationally to address gender based violence in schools. The training programme was based on the updated version of the training manual *"Opening Our Eyes: A manual for educators on addressing gender based violence in South African Schools"* and provided participants with the knowledge and skills to address gbv and to cascade the training in their respective districts. Districts are continuing with the training.

Gender Empowerment Programmes

The GEMBEM (Girls & Boys Education Movement) is a movement that provides learners with the opportunity to harness their social capital as peers to positively impact on themselves and their communities. Part of the programme includes the formation of clubs and the participation in GEMBEM Jamborees that provide information on careers and life skills which has a strong gender bias, it also raises awareness on gender-based violence.

The ***Girls Education Movement (GEM)*** was initiated specifically to encourage girls to study science and technology (DoE, 2008). The 'Techno-Girl Programme' was introduced to provide career guidance and life-skills support to girls, particularly in careers that involve mathematics and technology. In general, the DBE and Provincial Education Department (PED) have made concerted efforts to entrench programmes that must serve as vehicles to empower both girls and boys, by providing career guidance and the teaching of socially related life skills.

Speak Out Against Abuse

DBE has developed an advocacy programme for learners that inform them of their rights and the course of action if they are sexually harassed or raped. The advocacy programme is supported by a comprehensive and leaner friendly handbook entitled *"Speak Out" Youth report sexual abuse-A handbook for learners on how to prevent sexual abuse in public schools.* The advocacy programme utilises school dialogues and role playing to address gender based violence in schools.

DBE has, in response to the ***Sexual Violence by Educators in South African Schools: Gaps in Accountability report,*** drafted a Protocol for dealing with sexual violence in schools. The document is aimed at empowering schools to better handle cases of sexual violence in nature presented to them. It is being internally consulted upon.

There are different levels of responses if a teacher is alleged to have been sexually involved or having violated a learner. The disciplinary processes are as follows:

- The first is the criminal process. The rape, sexual violence and any other related offence must be reported to the police. If the victim is a minor, the educator can receive a life seatence.
- The second is the Departmental disciplinary process where if it is proven that the educator was sexually involvement with a learner as it is against the South African Council of Educators Code of Ethics the educators is deregistered from SACE and dismissed.
- Further such an act is also in contravention of the Employment of Educators Act and the teacher must be fired.
- The Department of Basic Education has developed TORs for the development of a sexual violence protocol for schools that aligns the role of different role players like Department of Social Development, Department of Justice and Constitutional Development, National Prosecution Authority, South African Council of Educators

(SACE) and South African Police Services (SAPS) and the different structures in the education system. This process will be funded by UNICEF.

- Furthermore, our South African Schools Management Systems (SASAMS) also has fields that schools have to populate related to violence including gender based violence.

First, rape in mines is a criminal offence in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

Second, Notice 1367 of 1998 of the National Economic Development and Labour Council (NEDLAC) in terms of the Labour Relations Act, 1995 was developed: Notice of Code of Good Practice on the Handling of Sexual Harassment Cases (hereinafter referred to as the Code)

The objective of this Code is to eliminate sexual harassment and violence in the workplace including mines, and to provide appropriate procedures to deal with sexual harassment or violence and to prevent its recurrence. The code encourages and promotes the development and implementation of policies and procedures that will lead to the creation of workplaces that are free of sexual harassment or violence, where employers and employees respect one another's integrity and dignity, their privacy, and their right to equity in the workplace.

Paragraph 4 defines forms of sexual harassment

Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the examples listed as follows:

- Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.

D. Harmful practices

South Africa remains committed to protect the rights of women, regardless of our diversified cultures, beliefs, religions and social origins. With regard to Ukuthwala Custom, it is noted with appreciation that the Special Rapporteur recognises the progressive efforts taken by our courts to uproot the unlawful practice of this custom, which is already criminalised by our law. 10

Article 16 of Convention on the Elimination of all Forms of Discrimination Against Women ("CEDAW" hereafter) requires State Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Further, article 16 of CEDAW obliges State Parties to ensure that "the betrothal and the marriage of a child shall have no legal effect and all necessary actions, including legislation, shall be taken to specify a minimum age for marriage, and to make the registration of marriages compulsory". South Africa is bound by CEDAW.

South Africa is also bound by the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women which contains important provisions on, amongst others, reproductive rights, marriage, divorce and inheritance rights. Article 6(c) of the Protocol to the African Charter enjoins State Parties to encourage monogamy as the "preferred form of marriage", while at the same time protecting the rights of women in polygamous marriages. This means that those who are already in polygamous marriages should be protected, but

[10] Children's Act; PEPUDA, 2000; Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; Prevention and Combating of Trafficking in Persons Act, 2013 (Act No 13 of 2013.

that these types of marriages should be discouraged moving forward. In compliance with this article South Africa promulgated the Recognition of Customary Marriages Act 120 of 1998 (hereafter referred to as the RCMA). The RCMA recognises the equality of husband and wife in terms of status, decision-making, property and children, and sets out the requirements of a valid customary marriage. One of the essential requirements of the Act is consent of both spouses to be married and it requires that both spouses be above eighteen years

Article 8(1) of the Southern African Development Community ("SADC" hereafter) Protocol on Gender and Development sets out that "state parties shall enact and adopt appropriate legislative, administrative and other measures to ensure that women and men enjoy equal rights in marriage and are regarded as equal partners in marriage" and article 8(3)(c) provides that "every marriage, including civil, religious, traditional or customary is registered in accordance with national laws." These international instruments are incorporated into South African law because section 39(1) of the Constitution provides that, when interpreting the Bill of Rights, a court, tribunal or forum must consider international law.

Ukuthwala is a form of abduction that involves kidnapping a girl or a young woman by a man and his friends or peers with the intention of compelling a young woman or her family to endorse marriage negotiations. In ancient Africa, particularly among the Nguni, Ukuthwala was a condoned albeit abnormal path to marriage targeted at certain young women of marriageable age. But it did not involve raping or having consensual sex with the girl until marriage requirements had been concluded. If the young woman's family refused to endorse marriage negotiations, the young woman would be returned to her family without having been raped. The act of Ukuthwala, however, was not with impunity; it incurred Delictual liability for the culprit, in the form of the payment of one or more herd of cattle to the father or legal guardian of the girl.

Ukuthwala as it is practiced now is not according to the African custom. Today it increasingly involves the kidnapping, rape and forced marriage of minor girls. This practice is not condoned, it is a criminal offence, and if found guilty by the courts, the perpetrator can be sentenced to life imprisonment if it involves a minor.

Section 28 of the Constitution of the Republic of South Africa states:

- A child's best interests are of paramount importance in every matter concerning the child.
- In this section "child" means a person under the age of 18 years.

This means that a child's best interests are of paramount importance in every matter concerning the child," therefore custom, cultural or religious rights cannot trump the rights of children. South Africa regards the distorted practice of ukuthwala as a criminal and harmful practice that steals childhood and impacts negatively on their health, development and gender equality. It is considered a criminal offence liable to conviction when found guilty.

In terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Sexual Offences Act), an adult who has sex with a child following her kidnapping and abduction (Ukuthwala) constitutes rape in violation of the Sexual Offences Act).

The Sexual Offences Act prohibits the sexual exploitation of children by their parents and others. Parents, relatives or others who collude in, or aiding and abetting, the Ukuthwala of a girl child commit the crime of the sexual exploitation of children. These parents and relatives also face being charged with Trafficking in Persons, under section 71 of the Sexual Offences Act.

The Prevention and Combating of Trafficking in Persons Act 7 of 2013 (Trafficking Act) prohibits the recruitment, sale, supply, procurement, transportation, transfer, harbouring, disposal or receipt of persons by means of the use of threat, force, intimidation or other forms of coercion; or by abusing vulnerability, for the purpose of exploitation. Parents, relatives and others who hand over a child into a forced marriage for financial or any other type of gain can be prosecuted under section 4 read with section 1 of the Trafficking Act.

Ukuthwala is not considered as a valid marriage. According to the Recognition of Customary Marriages Act 120 of 1998 (RCMA), both the bride and the bridegroom must consent to a marriage. The age of consent is 18 years of age. In the practice of ukuthwala there is no consent.

The distorted practice of Ukuthwala is considered as a discriminatory practice. The definition of discrimination in PEPUDA was taken from the CEDAW definition of discrimination. Chapter 2 of the Act deals with the prevention, prohibition and elimination of unfair discrimination, hate speech and harassment on any of the prohibited grounds, as set out in the definition of 'prohibited grounds' (which is not a closed list, but all of the 17 prohibited grounds are contained in the Constitution).

This means that ukuthwala and other practices that are dehumanising young girls are regarded as unfair discrimination by PEPUDA. The rights in PEPUDA can be enforced in the specialised courts called Equality Courts

The practice of ukuthwala is prevalent in Eastern Cape and KwaZulu Natal.

Whilst we acknowledge that there are instances of misconduct on Police provision of services, overall, Police go all out to protect all people in South Africa. The Independent Police Investigation Department (IPID) is responsible for investigating Police misconduct. The Special Rapporteur is requested to provide a source for the finding that law enforcers do not act when victims of ukuthwala or their families report incidents of ukuthwala so that IPID can investigate those allegations.

There is an increase in vehicle allocation to Diepsloot and SAPS has purchased a new fleet which is in the process of being distributed.

- Noted
- Noted

The Children's Act prohibits virginity testing which is an effort to protect children who may not be able to express themselves freely in addressing social, cultural and religious practices which may be detrimental to their wellbeing.

There is a need to find the appropriate balance between recognizing South Africa's diverse cultural practices and respecting the constitutional framework which promotes the values of human dignity, the achievement of equality, the advancement of human rights and freedoms.

The Preamble of the Constitution of the Republic of South Africa provides that the new post-colonial South Africa "belongs to all who live in it, united in [their] diversity," that the new South African society shall be one based on democratic values, social justice and fundamental rights and one in which the government is based on the will of the people and where every citizen is equally protected by law."

Culture and its practices are protected in the Bill of Rights. The equality clause (section 9) in the Bill of Rights specifically provides that:

- (1) "Everyone is equal before the law and has the right to equal protection and benefit of the law."

It goes further to specifically prohibit the State and all persons from unfairly discriminating both directly or indirectly against anyone on one or more grounds, including culture, section 9(3) and (4).

The Constitution provides in section 30 that:

- "Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights."

In section 31, the Constitution provides that:

- "31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –
    - to enjoy their culture, practice their religion and use their language; and
    - to form, join and maintain cultural, religious and linguistic associations and other organs of civil society."
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

This means that culture as a way of life for a group of people, is given a place in our Constitution. But no culture is above the law. The Constitution is clear that cultural rights are protected subject to the Constitution. Section 31 above recognises cultural rights of communities and groups provided that such rights are not exercised in a manner inconsistent with any of the provisions of the Bill of Rights.

Commenting on these provisions, the Constitutional *Court in Prince v President of the Law Society of the Cape of Good Hope & Others* 2002 (3) BCLR 231(CC), para 49 said:

- "Our society is diverse. It is comprised of men and women of different cultural, social, religious and linguistic backgrounds. Our Constitution recognizes this diversity. This is apparent in the recognition of the different languages; the prohibition of discrimination on the grounds of, amongst other things, religion, ethnic and social origin; and the recognition of freedom of religion and worship. The protection of diversity is the hallmark of a free and open society.
- Given our past in South Africa, it is important that we strive to protect our indigenous cultural practices. These were the subject of domination and subjugation during the colonial and Apartheid years. In our new constitutional dispensation we need to strive to seek to give recognition to cultural practices within our constitutional parameters. Culture however is not static, but dynamic. We therefore need to question many of our cultural practices and interrogate in a constructive manner the extent to which they conform to the constitution."

Further, the consultation process during the development of the Children's Act revealed that many young girls believed that virginity testing encourages them to abstain until marriage and therefore supported it, hence the Department of Social Development prohibited virginity testing for children below the age of 16 and requires consent for girls above 16 years of age.

The KZN municipal scholarship which was given to girls who stay as virgins by the mayor has been challenged and opposed by the Commission for Gender Equality and some organisations on the basis that it is unconstitutional..

The Special Rapporteur is requested to furnish the source of what the Minister confirmed or withdraw this paragraph

E. Violence against women and girls in informal settlements

South Africa has 9 Provinces constituted by 8 Metros, 44 District municipalities and 226 local municipalities. Visiting 3 districts in three Provinces does not constitute travelling across the country.

In South Africa there is no area that is a no go zone. The Police Station in Diepsloot is functioning and the Police Station is capacitated with both Human and Physical resources. It is noted and acknowledged that the area is made out of informal settlement with no proper demarcation of infrastructure. SAPS has a fixed establishment for each and Police Station which is reviewed as and when required.

Para 29 : Noted

F. Violence against specific groups at risk, including women and girls with disabilities, elderly women and LGTBIs persons

Para30 : Refer to the next paragraph

The cases of sexual violence against Children with Disabilities (CWD) are accommodated in the South African justice system and special provision is given to CWD. From the reporting phase of the case, necessary mechanism to attend to the children with mental, physical, intellectual or sensory impairment are in place within the criminal justice system. There is an established specialised service for victims of sexual offences at the service points within the criminal justice system to ensure that the system's response is prompt, effective and efficient. There is integration of services for sexual violation from the reporting phase at the South African Police Service (SAPS), Department of Health, Department of Social Development, Department of Justice and Constitutional Development (DoJ&CD) and the National Prosecution Authority (NPA), to the final phase of judgement/sentencing.

DoJ&CD has upgraded regional courts into Sexual Offences Courtrooms, in terms of the new Sexual Offences Courts Model. The model provides court-based victim-support services to minimize secondary victimisation and trauma, speed up the turnaround time in finalizing these cases, and improve the conviction rate.

In the criminal justice system, in particular the sexual offence courts, there is a presence of a victim support person. Social Workers from DSD assist the survivors and further take the survivor through the counselling process, assessment and referral. When the CWD reaches the sexual offences courts, they find the victim support services, which are constituted of the trained Presiding Officers who are trained on child development, working with children with mental disabilities and the dynamics of sexual offences. Specialist Prosecutors who are experienced in prosecuting and have received specified training on child development, working with persons with mental disability and the dynamics of sexual abuse, the Court Preparation Officers they help prepare the sexual violence survivors to testify in court, they offer specialist witness services of court preparation for complainant, they also provide pre- and post-trial counselling of victims: for victims, children, CWD and adults victims. The Court Intermediaries are trained and qualified professionals (often drawn from Social Workers) who are able to assess the sexual violence survivor, the CWD and the impact of crime. They assist the victims during the testifying process; they translate questions from the court to the child in a developmentally appropriate manner. They are also trained on how to interact with CWD during the trial process. In 2015 DoJ&CD advertised 185 permanent posts of court intermediaries and 9 posts of Assistant Director Intermediaries, and is currently filling these posts. There are also the designated court clerks that give support to the trial process. In 2013 DoJ&CD and NPA further developed a customized

Trauma Debriefing Programme for court personnel in sexual offences courts to reduce levels of vicarious trauma and enable them to cope with the day to day work in the sexual offences courts. The implementation of this Programme is on-going.

During the trial, the child victims and CWD are able to give evidence by demonstrating the incident of sexual violence using the anatomical correct dolls, in incidents where the CWD is unable to articulate himself/herself during the trial. Through observation, the professionally qualified and trained Intermediaries are to conduct emotional analysis of CWD/survivor. In incidence where a victim child/CWD experiences challenges during the trial, experts are engaged to assist further during the trial whilst giving support to the victim

The department of social development is championing legislation on Victim Support services to legislate VEP services in the country provided by both government and civil society organisations. The Bill will be presented to cabinet for broader consultation with the sector during 2016.

South Africa has also recently approved a White Paper on the Rights of Persons with Disabilities which promotes and protects the rights of persons with disabilities.

Para 32

Noted

Para 33

Noted

Para 34

Noted

Para 35

Police Officers are governed by a number of legislation when policing. Furthermore, Police must comply with the SAPS Code of Conduct; any Police official that violates that legislation is dealt with accordingly. There is also an independent body (Independent Police Directorate) that investigates crimes committed by Police Officers.

IV. Incorporation of the international and regional framework on violence against women

A. International and regional framework

Para 36

The DoJ&CD is working on ratification of the International Convention for the Protection of all Persons from Enforced Disappearance; a Cabinet memorandum is at the Ministry for consideration. There are on-going discussions between the DoJ&CD and the South African Human Rights Commission regarding the ratification of the Optional Protocol to the Convention Against Torture. The DoJ&CD has made a proposal to the Commission on possible extension of their mandate to include the creation of a National Preventative Mechanism required by this Protocol. The Commission is working on a Business Plan in this regards, where after a decision will be taken on ratification of the Protocol.

Para 37

Noted

B. Observations of UN monitoring mechanisms

Para 38

Refer to paragraph 9 (iii – xi)

DSD is in the process of developing a Unified Family Policy; however, whatever the Policy contains will have to take the South African history into context.

Para 39

South Africa has proper and unprecedented legal framework for the empowerment of women which is also responsive to the South African context. What works in Europe may not work in South Africa due to different historical contexts. A unified code might result in serious injustices rather than promote gender equality, whereas the customary and religious marriages as they promote equality between the spouses in their context.

Para 40

This paragraph is not factual, the Special Rapporteur is referred to the CEAD 56th Session (18 – 30 October 2013), 2013/01 Decision of the Committee on CEDAW indicating that it received a submission under article 8 of the Optional Protocol on the 28th of February 2013..

Para 41

Noted

V. States responses and measures to address violence against women

A. Constitutional, legislative and policy framework

1. Constitutional Framework

Para 42

Noted

2. Most relevant legislation on VAW

Para 43

The contents of this paragraph are noted insofar as explaining purpose which the Domestic Violence Act No. 116 of 1998 is promulgated for but it has to be recognised that the law is enacted to serve all citizenry regardless of gender hence the Act is gender neutral. The application of the Act is gender sensitive and takes into account the structural inequality between men and women as it strives to protect the victim of domestic violence. For example, in acknowledging that a woman may be subdued and intimidated by her partner, section 18 (1) (a) and (b) of the Act clearly requires prosecutors not to withdraw a charge or refuse to prosecute a perpetrator of criminal acts of domestic violence without being authorised by the Director of Public Prosecution or a senior member of the National Prosecuting Authority designated by the Director of Public Prosecutions to perform the function.

The prosecutors are further directed in Part 28 of the National Prosecuting Authority Prosecutions Policy and directives to assist victims of domestic violence in a sensitive and non-judgmental manner and facilitates the speedy hearing of the criminal case

This Act gives a wide definition of 'domestic relationship' that goes beyond the family context to include parties who share residence, whether related or not. It promotes the rights of the Lesbians, Gays, Bisexual, Transgender and Intersex (LGBTI) persons by recognizes same sex relationships. In protecting children, it allows them to apply for protection order assisted or unassisted. This is in view of the fact that the abuser may be the child's parent or guardian. Most unusual, the Act further recognizes male persons as victims of domestic violence- equally entitled to legal protection, as espoused by our Constitution.

The protection order issued in terms of this Act is valid for life, unless cancelled by the court of law. It is also enforceable throughout the country so as to allow the victim to access immediate protection of the law wherever they are in the country.

Para 44

The views of the Special Rapporteur in this paragraph are fair in explaining the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007 but disappointing in quoting the provisions of sections 15 and 16 which have been repealed and no longer part of the law. It is further to be noted that in South Africa pregnancy is not a crime and no law could be applied to prosecute pregnant girls as reflected in this paragraph.

The President of the Republic of South Africa signed into law the Child Justice Act No. 75 of 2008, with effect from the 1 April 2010 and this law makes provisions for diversion which in practice apply to children who are in conflict with the law and requires where appropriate those children in conflict with the law to be diverted from the criminal justice system and where is not appropriate cases of children in conflict with the law are dealt with in the child justice courts. Therefore there are measures in place to ensure that children are not exposed to the criminal justice system which might cause serious trauma to them

Para 45

Noted

Para 46

Noted

Para 47

Noted

3. **Policy Framework**

Para 48

The correct information is that this POA was drafted by various government departments, provinces were consulted and civil society organisations working in the field were consulted and they are fully aware of the programme of action and the POA has been distributed to all Provinces .... The POA will be reviewed during 2017 to ensure that government takes into consideration outcomes and recommendations of studies conducted on the determinants of violence and diagnostic study on the services provided.

B. Institutional framework: national machinery and independent institutions

Para 49

It is not factual that there is lack of clarity on coordination and division of labour between the DoW and DSD on issues of VAW, the Integrated Programme of Action on Violence Against Women and Children (POA:VAW)

The department of social development is chairing and coordinating the work of the IMC... which gave birth to the POA which is being implemented by various government departments and civil society organisations within the sector. The role of the department of social development is clear in that it coordinates the work of the IMC and also coordinates all departments on the victim empowerment programmes.

The POA:VAW has identified the following Key Intervention for the Department to lead on:

- Establish new and strengthen existing infrastructure, that is, shelters, low cost housing for women, boarding facilities for children in rural and peri-urban areas) and safe houses and transport for women and children

Out of the 25 Key Interventions in Pillar 1: Prevention and Protection, which are led by other Departments, the DOW is expected to have programmes for 15 of those which are

- Awareness raising and advocacy for national events and programmes
- Every Day Heroes Prevention Programme
- Community Dialogues on Harmful cultural and traditional practices
- Dialogues on child killings and violence against children with disabilities
- Advocacy campaigns on legislation
- Education on inter-country diversity and appreciation for human rights
- Encourage parents to register for birth certificates
- Prioritise safety in the planning processes of municipalities
- Develop a national prevention strategy linked to the planned violence root cause analysis
- Strengthen school based and after-school programmes to promote human rights, gender equality and peaceful conflict resolution
- Outreach and awareness raising campaigns on cyber-crime and child pornography
- Link online counselling platforms to helpline services through social media
- Strengthen partnerships
- Build inter-sectoral systems to deal with vaw
- Mainstream VAWC into policy initiatives

Out of the 13 Key Interventions in Pillar 2: Response, which are led by other Departments, the DOW is expected to have programmes for only one which is:

- Mobilise communities to undertake programmes to protect women and children

Out of the 9 Key Interventions in Pillar 3: Care and Support, which are led by other Departments, the DOW is expected to have programmes for only 2 of those which are:

- Establish new and strengthen existing infrastructure that is; shelters, low cost housing for women, boarding facilities for children in rural and peri-urban areas and safe houses and transport for women and children
- Empower survivors of violence through long term life skills, social and economic programmes

Out of the 12 Key Interventions in Foundations Systems Components: which are led by other Departments, the DOW has programmes for 4 of those which are:

- Revise protocols on addressing cases of VAWC to increase effectiveness and efficiency
- Establish and implement an M&E system
- Develop an inter-sectoral training policy and minimum norms and standards
- Ensure that VAWC programmes address social inequalities and income inequities.

The Department is currently implementing the following programmes in line with the POA:VAW

The following are programmes of the DOW

- #365 days against gender based violence
- **# *COUNTMEIN*** to mobilise every member of society to eradicate gender based violence
- Community dialogues: to raise awareness, provide support and strengthen community structures that addresses VAW&C
- Build up to 60th Anniversary of the women's march: The Department has developed programmes that involves communities in recognising the heroines in their localities and honour them. This will also instil in them to respect their females in their midst and to be their "sister's keepers"
- Radio, TV and Social media Programmes: to ensure maximum reach the DOW is utilising these platform to raise awareness and educate the nation on Gender Based Violence

With regards to key intervention (4a):

- The Department will do research on Shelters; their location, services offered and resourcing
- The Department will establish a Task team constituted by government, Business and Civil Society to develop a plan to be approved by Cabinet to be implemented by the relevant department and DoW will monitor and evaluate the implementation of the plan

Para 50

Noted

Para 51

Noted

Para 52

Noted

Para 53

Noted

C. Some inter-sectoral responses to VAW

Para 54

Noted

Para 55

Noted

Para 56

The contents of this paragraph are noted and wish to state that the funding for the 51 Thuthuzela Care Centres is now the responsibility of the government of the Republic of South Africa through the National Treasury which has made funds allocation for the TCCs and the government of the Republic of South Africa is in a process of taking over the remaining 4 TCCs which are still at the inception stage and were established in partnership and funds through Foundation for Professional Development (FPD)

Para 57

Noted

Para 58

The Family Violence, Child Protection and Sexual Offences (FCS) Units were re-established in June 2010. There are 1140 Police Stations nationally and 176 FCS Units. All 176 FCS Units are capacitated with both Human and Physical Resources and work on a cluster basis. All police stations that receive cases of child sexual violence and domestic violence refer the case to the FCS in their cluster. Members of FCS Units receive specialized training to deal effectively with sexual offence related case. Members are also trained on leadership and management courses. Since the re-establishment of FCS Units there is improvement on conviction rate. Furthermore, issues relating to poor performance are dealt with in accordance with SAPS Performance Management Regulations. SAPS has introduced Excellence Awards System to recognize and reward the performance of members.

Para 59

The establishment of the Thuthuzela Care Centres by the government of the Republic of South Africa is a continuing program and work in progress and this is evident from the fact that the government is funding these centres. The services at the centres are available to women and girls, amongst others, regardless of whether they are from informal settlements or rural areas as long as the centres are existing within their reach. It is also to be acknowledged that the Thuthuzela Care Centres, though in principle have to in every health facilities in the country which treat victims of sexual violence, they have to be roll out within the available resources allocated within a particular financial year and the priority for their establishment is guided by, amongst others, what paragraph 57 states which is "... where the incidence of rape is particularly high."

Every Magistrate's Court has a division that deals with Domestic Violence matters. In large offices, there are dedicated clerks and Magistrates to attend to domestic violence matters. Section 5 of the Domestic Violence Act provides that the application for protection order may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately. However, this provision has been found impracticable to a certain extent; as a result the National Intersectoral Committee on Domestic Violence-chaired by DoJ&CD has been recently commissioned to develop national guidelines to address the operational gaps attached to it.

There are 1140 Police Stations countrywide that are rendering 24 hours services and are accessible to all members of the community including women and girls living in informal settlement and in rural areas. In some of the rural areas where there is infrastructure challenge, Satellite Police Stations are erected.

VI. Gaps and challenges

A. Prevention

1. Collection of data and statistics on VAW

Para 60

The statistics on crimes against women are captured. The government prioritizes all crimes against women whether they take place in a family setup or in general. SAPS reports annually to the Police Portfolio Committee on the statistics of the Domestic Violence Act. Once reported to Parliament, that information is in the public domain anybody can access it

The department of social development as the coordinator of victim empowerment programme in the country came up with the Victim Empowerment integrated system, which aims at collecting data on all form of violence for different key populations. There are 100 sites designated to collect data as from 2015.

Para 61

Targets are set as a management tool to reduce crime. All crimes that are reported are recorded on the system. In the event that the targets are not met, proactive measures are put in place to prevent crime from escalating, hence the recent turnaround strategy of "Back to Basics" and introduction of recovery plan.

Para 62

Since the implementation of Domestic Violence Act, Domestic Violence, a Register is kept at each and every police Station and is perused daily.

2. Underreporting of cases of VAW

Para 63

Children are taught to speak out at school as part of the Life Orientation curriculum:

The **GEMBEM** (Girls & Boys Education Movement) is a movement that provides learners with the opportunity to harness their social capital as peers to positively impact on themselves and their communities. Part of the programme includes the formation of clubs and the participation in GEMBEM Jamborees that provide information on careers and life skills which has a strong gender bias, it also raises awareness on gender-based violence.

The Girls Education Movement (GEM) was initiated specifically to encourage girls to study science and technology (DoE, 2008). The 'Techno-Girl Programme' was introduced to provide career guidance and life-skills support to girls, particularly in careers that involve mathematics and technology. In general, the DBE and PEDs have made concerted efforts to entrench programmes that must serve as vehicles to empower both girls and boys, by providing career guidance and the teaching of socially related life skills.

Speak Out Against Abuse

The department has developed an advocacy programme for learners that inform them of their rights and the course of action if they are sexually harassed or raped. The advocacy programme is supported by a comprehensive and leaner friendly handbook entitled "Speak Out" Youth report sexual abuse-A handbook for learners on how to prevent sexual abuse in public schools. The advocacy programme utilises school dialogues and role playing to address gender based violence in schools.

The TCC-model is specifically focussed on being victim-friendly and court directed with prosecutor-guided investigations and stakeholder cooperation. The ultimate goal is to minimise secondary victimization, reduce the cycle period for the finalisation of cases and to increase the conviction rates of these cases.

When reporting a crime, the victim is removed from an environment such as a police station, to a more victim-friendly environment before being transported by police or an ambulance to the Thuthuzela Care Centre at the hospital.

The person also receives crisis counselling. If the medical examination happens within 72 hours of the incident, post-exposure prophylaxis is given. The investigating officer on call at the centre will take the person's statement. The person will receive appropriate medication and is given a follow-up date for further medical treatment, before being transported home or a place of safety. A referral letter will be given or an appointment made for long-term counselling.

Before the trial, as part of the TCC-model, a case manager will oversee the prosecutor-guided investigation and will ensure that the case is trial and court ready. The case manager is a legally qualified official with specific additional expertise in dealing with gender-based violence matters.

With regards to the trial, consultations with a specialist prosecutor will take place before the case goes to court and court preparation by a victim-assistant officer will be undertaken. The person must also be given an explanation of the possible outcome and regular updates of the trial process by the case manager. The Thuthuzela model is an outstanding example of interdepartmental cooperation.

We have also recently re-established the sexual offences courts. These dedicated services use intermediaries, audio-visual equipment and specialised training, among other measures. The NPA's Sexual Offences and Community Affairs (SOCA) Unit developed comprehensive training manuals which are updated annually to be in line with the latest developments in law for specialist prosecutors and also an integrated training manual for stakeholders at our TCCs.

Through sexual offences courts, we are able to provide specialised victim-support services, improve the effectiveness of witnesses in court, reduce the turnaround time in the finalisation of sexual offences matters, and improve conviction rates. The courts aim to minimise secondary trauma for victims.

We also need to emphasise social context training for all service providers so that secondary victimization can be avoided. This is important in order to encourage rape victims to report rape and to have confidence in the criminal justice system.

The Department of Social Development has places of safety for children in need of protection. An application is made to the A Children's Court. The Children's Court does not deal with criminal cases, however it deals with issues affecting children and therefore where a child's safety will be affected due to co-existence with perpetrators because of the link to the family or community setting, the Children's Court can place a child in safe care or refer the child and/or the parent to services that they may require.

3. Lack of national strategic plan on VAW

Para 64

The POA: VAW is a National Strategic plan to address violence against women and children, there is no need to duplicate. The Special Rapporteur fails to appreciate Government's initiatives as long as they are not according to her prescription.

B. Protection (services providers)

1. Quality of health and forensic examination

Para 65

The policy and guidelines for treating and care of victims of sexual offences were reviewed by the unit of women's health with the help from MRC. The guidelines will be launched soon.

Para 66

Victims of sexual offenses are referred to designated public health facilities by health facilities. No victim of sexual offences is serviced by health care workers who do not have clinical forensic medicine training. CSO's are not utilised in the designated public health facilities for victims of crime and violence. Only Doctors and nurses with clinical forensic medicine training manage victims of sexual offences, collect forensic evidence, provide PEP to victims, complete the J88 and present evidence in court. No CSO is allowed to render such services. CSO's are utilised in the HIS and TB units and they provide services on these areas which does not cover victims of sexual offences.

2. Funding of CSO

Para 67

The information provided here is not a true reflection of the relationship between the Department of Social Development and CSOs. See the information in the next paragraph.

Para 68

Funding of CSOs has increase through criminal assets recovery account money. The department has since transferred 29 Million to 59 CSOs to provide prevention and protection services over a period of four years since 2013 to date.

3. Lack of shelter/second-stage housing

Para 69

The department of social development has established 201 white door safe spaces in addition to the 88 established shelters and 8 khuseleka one stop centres mentioned in the special rapporteur report

Para 70

The POA:VAW has identified as one of the Key Intervention for the Department of Women to lead on: The establish new and strengthen existing infrastructure, that is, shelters, low cost housing for women, boarding facilities for children in rural and peri-urban areas) and safe houses and transport for women and children. Therefore this includes the review of existing shelters to ensure that they are responsive to the needs of women and facilitate the establishment second-stage housing while waiting for the longer-term accommodation.

On the issue of permanent housing arrangements, it cannot be addressed in isolation from South Africa's human settlement programme. The South African Government is proud that it has completely outdone itself by providing 4.3 million houses and subsidies to more than 20 million of its people since 1994. This number deliberately includes women. The achievement is remarkable because it is acknowledged as unprecedented global achievement in the international arena and the plaudits have been echoed by many other independent research institutions. In a recent report, the South African Institute of Race Relations stated that: *"the view that ... living standards are only a little better than they*

were twenty years ago is untrue. On the contrary, service delivery (here in the form of housing) must be judged as a success in many respects". And renowned economist, Mr Mike Schussler calls our achievements *"a huge success story".*

C. Prosecution

1. Shortcomings in the criminal justice system's response

Para 71

In terms of the National Instruction 2/2012 all stations are expected to have Victim Friendly Rooms (VFR). In Police Stations where the VFR are not yet established, alternative arrangements are made which includes providing of a private space to render services to Victims of Gender Based violence. Furthermore, SAPS has an Employee Health and Wellness that is responsible for the well-being of Police Officers which provide counselling services to members to cope with challenges that they face in their daily lives.

Para 72

Police Officers are governed by a number of legislations when policing. Furthermore, Police must comply with the SAPS Code of Conduct; any Police that violate the legislation are dealt with accordingly. There is service a charter that provides guidelines on how to treat victims of gender based violence. Police Officers are also trained on victim empowerment and domestic violence courses. Furthermore, members are required to advice victims on options available to them which include seeking of protection order or opening a criminal case.

Para 73

SAPS members are provided with training in respect of Domestic Violence course, Victim Empowerment and Sexual Offences Course. There are other related number of courses that are provided to members. Furthermore, SAPS has a National Instruction on Victim Empowerment. This instruction intends to give effect to the Cabinet approved Service Charter for Victims of Crime in South Africa and Minimum Standards for services to victim of crime to protect and promote the rights of victims in compliance with South Africa's obligations under various international and regional human rights treaties. The purpose of this instruction is to ensure the service, as the initial point of entry to the criminal justice system provides an effective, victim-friendly service recognizing and protecting the rights of victim of crime.

Members that are attached to FCS Units have received specialized training to investigate sexual offences related incident. These investigators are qualified and have secured a high number of convictions which is evident in the number of life sentences obtained which is increasing annually.

Para 74

There are targets set for prosecutors and reaching the target for conviction rate, as one amongst prosecutors' target, is not a pressure placed on prosecutors to deliver convictions. It is to be noted that does not deliver convictions as the decision to convict or not to convict lies with the presiding officer/judge. Therefore the responsibility of prosecutors is to deliver prosecutions in good faith without fear, favour and prejudice subject only to the Constitution and the law.

Victims are witnesses and only required to attend court upon being subpoenaed by the prosecutor when the case is trial ready and where there is a financial burden for victim as the witness, the witness fee payable to witness may be made available

Para 75

DoJ&CD has upgraded Regional Courts into Sexual Offences Courtrooms, in terms of the new Sexual Offences Courts Model. The model provides court-based victim-support services to minimize secondary victimisation and trauma. The model requires security and privacy on sexual offences trials. The access to the sexual offences courts area is private to minimise the exposure of the survivors to public in court. They have a private separate entrance to the demarcated sexual offences area, which can only be accessed through security systems either by biometric security system or access cards available only to the sexual offences personnel. The demarcated sexual offences area comprises of the child waiting room/ teenage waiting room, adult waiting room, adult and child friendly toilets. The kitchenette is optional and is provided only where space allows. It is used by parents/ guardians who have brought prepared food for their children. It must, however, be noted that DoJ&CD does provide the parent/ guardian and the child with witness fees, which cover travelling and food allowance.

The sexual offences survivor may testify in a private testifying room with a dual -view closed circuit TV system linked to the court room. Children and witnesses with mental disability give evidence at the Private Testifying Room with the assistance of an intermediary. The magistrate is able to have a clear and close view of the child/ mentally disabled witness and intermediary from the Private Testifying through a monitor that is installed on the court bench. This monitor allows the magistrate to see when the child/ witness is tired or requires break. There's a child's sofa-bed at the Testifying Room to allow a child to have a nap during proceedings, when need arises.

Subsequent to the Re-Establishment of the sexual offences courts, there has been an increased conviction rate, in sexual offences cases, which may be as a result of the improved victim-centric approach- offered by these courts.

Since the onset of democracy victim empowerment has been one of the pillars of fighting crime in the National Crime Prevention Strategy (NCPS), the policy framework that was the foundation of all developments within the criminal justice system. What was considered unique about the NCPS was its approach in terms of dealing with crime and violence by shifting emphasis from a state-centred criminal justice system to a victim-centred restorative justice system. The shift in approach was to be accompanied by a range of broad structural and operational reforms.

2. Specific gaps in the implementation of the DVA and SOA

Para 76

Domestic Violence Act and Sexual Offences Act are budgeted for within the national budget e.g. FCS Detective Learning Programme, First Responder to Sexual Offences, Domestic Violence Learning Programme, establishment of victim friendly rooms etc. Furthermore, SAPS resources are prioritized to prevent and combat gender based violence related incidents.

Subsequent to the Re-Establishment of the sexual offences courts, there has been an increased conviction rate, in sexual offences cases, which may be as a result of the improved victim-centric approach- offered by these courts.

Para 77

Police Officers are required to comply with the Domestic Violence Act. However, Police Officers make arrest when the protection order is violated.

Para 78

The Domestic Violence Act makes provision that upon arrival of the police at the scene of crime, the member must attempt to locate the complainant and determine whether the complainant is in any danger, e.g. in some other instances where danger is eminent victims are referred to shelter.

Para 79

Impact assessment was conducted on Domestic Violence Learning Programme, which subsequently was reviewed to enhance the quality of the programme in line with psycho-sociological impact on VAW on victims.

Para 80

The Domestic Violence Act allows a victim of domestic violence to apply for a protection order, which when granted becomes valid for life. There are many reasons that lead to the application not being finalised. One of the reasons being that the applicant abandons the application when the cycle of abuse is in the honeymoon phase

VII. Conclusions and recommendations

Para 81

This paragraph misrepresents the fact it needs to be amended. South Africa has consistently ranked the World Economic Forum's Global Gender Gap Index ranked South Africa at number 12 out of 135 countries in 2010; number 14 in 2011, number 16 in 2012 and 17 in 2013, despite the decline it is still within the top 20 countries. There are many other ranking agencies that have ranked South Africa to be one of the countries which have the best policies for women to live in.

Government operates as a system therefore concluding that gender-based violence continues to be pervasive and a systematic women's human rights violation suggests that government is perpetuating the violence whereas Government has prioritised violence against women and children, the prosecution appeals minimal sentences for convicted perpetrators and government has developed extensive and unprecedented body of laws and institutional mechanisms to combat violence against women and children For example:

- In 2011 the UN Secretary General Mr Ban Ki Moon recognised the TCC as a "world best practice model" in the field of gender violence management and response. These centres provide dedicated services to victims of sexual violence.
- The South African Police Services has established the Family Violence, Child Protection and Sexual Offences Units in order to provide victim friendly services to victims of gender based violence
- The Department of Social Development has trained Victim Empowerment service providers in all nine provinces. Six Khuseleka One Stop Centres which provide integrated victim empowerment services have been established. The Department established 84 shelters for abused women and 201 white doors (centres of hope) for victims of gender based violence in different provinces
- A 24 hour Gender Based Violence Command Call Centre has been established. The call centre handles 1500 calls a day and these calls are handled by 40 social workers able to deal with the issues raised. The Centre was awarded the Changing Lives Award at the 2014 AfricaCom Awards for providing telephonic support and counselling to victims of gender-based violence, the golden award when competing with Africa, Asia and Europe in the Technological Innovation Award in London, as

well as the Innovation Award in the Contact Centre Management awards. It has also won the Global Best Contact Centre Award.

Para 82

Special Rapporteur's recommendations

1. Law and policy reform

(a) PEPUDA is amended in order to achieve the recommended purpose and as lobbied by Civil Society Organisations during the development of the Draft Women's Empowerment and Gender Equality Bill;

(b) The recommendation is noted, however,

A Discussion Document was released by South African Law Reform Commission (SALRC) on May 2014, Project 138: The Practice of Ukuthwala is currently investigating the practice of ukuthwala. The investigation is also considering the following:

- the impact of ukuthwala on the girl-child;
- the appropriateness and adequacy of the current laws on ukuthwala, and whether or not the laws uphold the human rights of the girl-child (taking into consideration the principle of "the best interest of the child").

The debate whether Ukuthwala is a criminal offence or not has been laid to rest by the Jezile v S appeal court decision where the Appeal Court confirmed the Court aquo's sentence of 22 years for Ukuthwala.

(c) South Africa is currently finalising a Hate Crimes and Hate Speech Bill, which will be tabled in Parliament later this year.

(d) The SALRC has produced a Discussion Paper on Adult Prostitution.[11]

(e) Refer to par. 48.

(f) There are about 713 Magistrates Courts in South Africa and all of them have a Domestic Violence Court(s) and are fully funded.

(g) The recommendation by the Special Rapporteur to consider examining the feasibility of regulating the availability of alcohol as a mean to help reduce GBV is noted with appreciation and will be considered however. It has to be stated that prosecutors when deciding to abandon prosecution of a case they record reasons why prosecutions was abandon in the docket and the reasons are available to complainant.

(h) The recommendation by the Special Rapporteur to consider examining the feasibility of regulating the availability of alcohol as a mean to help reduce GBV is noted with appreciation and will be considered.

2. Investigation, prosecution, support services and protective measures

(a) Noted

[11] The Discussion Paper provides that all of the proposed options presuppose the criminalisation of under-aged and coerced prostitution and trafficking of people for the purpose of prostitution. The criminalisation of coerced adult prostitution must be included in the option which is ultimately recommended in the report.

(b) Noted

(c) Noted

(d) Noted

(e) Noted

(f) Noted

(h) With respect to the judiciary:

- The South African Judicial Education Institute is established to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts through continuing judicial education as provided for in the South African Judicial Education Institute Act 14 of 2008. The Institute commenced with training in January 2012.'

- All higher courts judgments are accessible on website;

(i) The DBE and SACE are already working together in disciplining educators who have perpetrated sexual violence, and the other recommendation is noted with appreciation;

(j) Noted

(k) Noted

(l) Noted

(m) Noted

(n) Noted, however the issue of housing cannot be considered outside the national plan for human settlement which is considered to be unprecedented;

(o) There are other organisations such as the South African National AIDS Council's (SANAC's) Men's Sector represents organisations and other bodies that work with men and/or run programmes focusing on men in the area of health and social upliftment. Further, the DoW and DSD have already established relationships with Men's Organisations to implement the following programmes: Men's care; Fatherhood programme and Positive male role model and "*#CountMeIn*" which mobilises men to be counted-in in the fights against gender based violence;

(p) Noted, however,

Media is very much involved in awareness raising and education of the public. South Africa adopted the 16 Days Campaign for No Violence Against Women and Children in 1998 as one of the intervention strategies towards creating a society free of violence. The Campaign has and continues to generate an increased level of awareness amongst South Africans with regard to the negative impact of all forms of violence against women and children. Since violence against women and children happens throughout the year not just during the 16 Days only, South Africa extended the activism to 365 days and launched "#365 Days for No Violence Against Women and Children" on 11 December 2014. The aim of extending 16 days to 365 days is to expand accountability beyond the JCPS cluster to include all clusters and provinces; and to combine technology, social media, Arts, journalism, religion, culture and customs, business and activism to draw attention to the many ways VAW&C affects the lives of all people in all communities.

Various media houses have been engaged and they have come on board. Media plays a critical role as it has a wider reach in the community and in ensuring that the public is educated, informed and encouraged to be active citizens who can be counted on to actively create safer homes, communities and society. Ensure mass mobilisation of all communities

to promote collective responsibility in the fight to eradicate violence against women and children courage society through consultation with FBOs, Media houses, Unions, Sports fraternity, Private sector and Civil Society Organisations to shift the society's view that violence against women and children is a government or criminal justice system problem to realising that it is very much a societal problem, and that failure to view violence as a societal problem results in all efforts failing to eradicate this scourge in our communities.

3. **National mechanisms**

(a) The recommendation is noted, however, roles and responsibilities between DoW and DSD in relation to their mandate with respect to gender equality and VAW are clear as indicated in paragraph;

Noted;

(c) Noted;

4. **Collection of data and prevention of VAW:**

(a) Noted.

(b) Noted

III. CONCLUSION

The Government of South Africa would like to thank the Special Rapporteur for accepting its invitation to visit South Africa, and hopes that the Special Rapporteur will receive our inputs in good faith in order to enrich the outcome of her visit.

South Africa remains committed to protect the rights of women though like many other countries it still experiences pitfalls and inadequacies in certain areas of intervention. The Government therefore undertakes to consider the recommendations made by the Special Rapporteur, and is looking forward to receiving further guidance from the Council.

(South Africa will present a Statement at the 32nd Session of the Human Rights Council and requests that this report be annexed as an Addendum to the Special Rapporteur's Final Report.